REMARKS

Upon entry of the amendment, which is respectfully requested, claims 10-11, 13-15 and 18-20 will be all of the claims pending. Of these claims 11, 13, 15 and 18-20 are withdrawn from consideration.

I. Election/Restriction

Claim 20 is indicated as being withdrawn as a formal matter in view of the Examiner's comments regarding the Restriction Requirement in the Action dated August 19, 2009 and the Advisory Action mailed May 6, 2010. However, Applicants respectfully traverse the restriction requirement for the reasons of record and a Petition under 37 C.F.R. § 1.114 for Supervisory Review is being submitted herewith.

As previously noted, the claims of Group I are drawn to ***a method for increasing plasma volume, comprising administering a gel composition*** and the claims of Group II are drawn ***a method for increasing plasma volume, comprising administering a food gel composition***. Thus, the claims of both Groups I and II are directed to the same method, i.e., ***a method for increasing plasma volume, by administering a gel composition having the same ingredients***.

Further, Applicants traverse the Examiner's determination that claim 20 is drawn to a non-elected invention and should be withdrawn.

Claim 20 is dependent on Claim 10 in Group I. Therefore, by virtue of this dependency, Claim 20 is part of Group I. Further, since claim 10 is a generic claim, claim 20 should be allowable when Claim 10 is found to be allowable. Thus, Applicants respectfully submit that

claim 20 should be examined with claim 10 of Group I from which claim 20 depends. Alternatively, Applicants respectfully request rejoinder of claim 20.

II. Information Disclosure Statement

At page 3 of the Action mailed August 19, 2009, the Examiner states that the listing of references in the specification is not a proper information disclosure statement, which is not relevant to the present application, since there is no listing of references in the present specification. ***Accordingly, Applicants respectfully request clarification from the Examiner for the record.***

As another matter, Applicants submitted a proper Information Disclosure Statement April 9, 2008 and the Examiner has returned an initialed copy of the attached PTO/SB/08 Form. However, the Examiner crossed off two of the foreign patent references, i.e., WO 2004/028279 and JP 61-50281. Applicants believe that the Examiner improperly crossed off these references because they are not in English. An English language equivalent for each of these references was concurrently submitted as indicated in the IDS transmittal letter submitted therewith which states: "In compliance with the concise explanation requirement under 37 C.F.R. § 1.98(a)(3) for foreign language documents, Applicant submits the following explanations: Cited reference JP 61-50281 corresponds to WO 86/00812, cited reference WO 2004/028279 corresponds to US 2005/0244543A1 (U.S. Application No. 10/525,385)." Therefore these references should have been considered by the Examiner. Applicants' representative attempted to contact the Examiner to discuss this issue but was unsuccessful. Applicants also requested correction of this issue for

the record in the previous Amendment submitted on April 30, 2009 and in the Amendment submitted December 22, 2009, but no action seems to have been taken.

In view of the above, Applicants respectfully request the Examiner to return an initialed copy of the PTO/SB/08 submitted with the IDS filed April 9, 2008, properly indicating that all references listed therein have been considered and made of record.

III. Response to Claim Rejections under 35 U.S.C. 103

Claims 10, 14, 17 and 20 under 35 U.S.C. § 103(a) as allegedly being obvious over Emoto (US Patent 6,458,395) and Davenport (J. Dairy Sci. 83:2819; 892 references).

Applicants traverse the rejection for the reasons of record, which are incorporated herein by reference, and additionally for the following reasons.

Specifically, the Examiner states that these references teach a composition and process of making a nutritional supplement using whey protein, hydrogenated soybean, organic acid, vitamin D, and various other ingredients, which embraces the presently claimed invention.

However, the protein component of the present invention is made of the following two components: (1) whey protein concentrate, whey protein isolate or desalted whey and (2) gelatin hydrolysates having a number average molecular weight of 500-10,000.

Emoto is silent as to the combination of (1) whey protein concentrate, whey protein isolate or desalted whey; and (2) gelatin hydrolysates. Further, Emoto is silent as to the molecular weight of gelatin hydrolysates.

Furthermore, Davenport is also silent as to combination of (1)whey protein concentrate, whey protein isolate or desalted whey; and (2) gelatin hydrolysates. Further, Davenport is also silent as to the molecular weight of gelatin hydrolysates.

Thus, Davenport fails to fill the gap between the instant invention and Emoto et al. Since neither reference teaches all elements of the claimed invention, the claimed invention would not have been achieved even if the references were combined. For at least this reason, the present invention is not rendered obvious by the cited references, whether taken alone or in combination.

Furthermore, the instant invention achieves unexpected results that are nowhere disclosed, taught or suggested by Emoto et al.

The present invention administering a gel composition containing (1) and (2) above significantly increases plasma volume, plasma total protein content and plasma albumin content. The effect of the invention is specifically disclosed in the Example of the specification.

Such effects would not be expected even in view of Davenport at al because the references are silent as to a gel composition containing (1) and (2) above, much less the effects of a gel composition containing a combination of (1) and (2) above as in the present invention.

For this additional reason, the present invention is patentable over the cited references, whether taken alone or in combination.

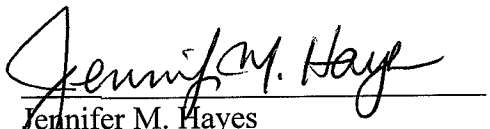
Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U. S.C. § 103.

IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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